

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

In re:
CITY OF SAN BERNARDINO, CALIFORNIA
Debtor.

Case No. 6:12-bk-28006 MJ

Chapter 9

COURT'S STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW

Hearing Held: August 28, 2013
Time: 1:30 p.m.

On July 5, 2013, debtor City of San Bernardino, California (the "City") filed its motion for summary judgment seeking an order determining that it is eligible for relief under chapter 9 pursuant to 11 U.S.C. §§109(c), 921(c) and 921(d) (the "Eligibility Motion") and supporting papers. On August 5, 2013, the California Public Employees' Retirement System ("CalPERS") filed its opposition to the Eligibility Motion and supporting papers. On August 16, 2013, the City filed its reply and supporting papers. A hearing was held on the Eligibility Motion on August 28, 2013.

By separate orders, the Court has determined that the City is entitled to summary judgment on the Eligibility Motion, and that that an order for relief under chapter 9 should be entered. Pursuant to Fed. R. Civ. P. 56, made applicable to bankruptcy proceedings by Fed. R. Bankr. P. 7056 and 9014, the Court hereby adopts the following Statement of Uncontroverted Facts and Conclusions of Law

concerning the City's petition and eligibility for chapter 9 relief in support of the grant of the City's Summary Judgment Motion.

UNCONTROVERTED FACTS

Uncontroverted Facts	Evidence
1. The City is a California municipal corporation operating under a city charter ratified by its voters.	Ex. A to Declaration of Georgeann Hanna In Support of City of San Bernardino's Memorandum of Facts and Law in Support of the Statement of Qualifications Under Section 109(c) of the Bankruptcy Code ("Hanna Decl.") [Docket No. 129]
2. The City is a municipality.	The evidence in paragraph 1 above and that no party objected to eligibility on Section 109(c)(1) grounds.
3. The City placed items on the agenda for the July 10, 2012 noticed public meeting of the Mayor and Common Council that there would be discussion on the City's budget for the fiscal year 2012/2013 and possible action on authorizing the filing of a petition under Chapter 9.	Hanna Decl., Exhibit D; Declaration of Andrea Travis-Miller in Support of City of San Bernardino's Memorandum of Facts and Law in Support of the Statement of Qualifications Under Section 109(c) of the Bankruptcy Code [Docket No. 126] ("Travis-Miller Decl."), ¶ 7.
4. A report was prepared entitled the "San Bernardino Budgetary Analysis and Recommendations for Budget Stabilization" dated July 9, 2012 (the "Budget Report").	Exhibits B and C to Hanna Decl.; Travis-Miller Decl. at ¶ 6.
5. At the July 10, 2012 noticed public meeting of the Mayor and Common Council, the Budget Report concerning the fiscal condition of the City was presented and the meeting was open for public comments.	Hanna Decl. Exhibits B and C; Travis-Miller Decl., ¶ 8; Busch Decl., ¶ 13.
6. The City placed items on the agenda of the July 16, 2012 noticed public meeting of the Mayor and Common Council for discussion concerning a declaration of fiscal emergency in the City and taking possible action on authorizing the filing of a petition under Chapter 9.	Exhibit E to Hanna Decl.; Travis-Miller Decl., ¶ 9.
7. The July 16, 2012 meeting of the Mayor and Common Council was open for public comments and was adjourned and continued to July 18, 2012. A presentation was made on the city's financial crisis at that meeting.	Exhibit F to Hanna Decl.; Travis-Miller Decl., ¶ 9.

Uncontroverted Facts	Evidence
8. The City placed items on the agenda of the July 18, 2012 noticed public meeting of the Mayor and Common Council for discussion concerning a declaration of fiscal emergency in the City and taking possible action on authorizing the filing of a petition under Chapter 9.	Exhibit F to Hanna Decl.; Travis-Miller Decl., ¶ 9.
9. A report entitled “City of San Bernardino, California Staff Report” dated July 18, 2012 (“Staff Report”) was prepared for the Mayor and Common Council regarding the subject of a declaration of fiscal emergency.	Exhibit I to Hanna Decl.; Travis-Miller Decl. ¶ 10; Bush Decl. ¶ 15.
10. At the July 18, 2012 noticed public meeting of the Mayor and Common Council concerning the fiscal condition of the City, the Common Council was presented with an considered the Staff Report and public comments were taken.	Exhibit I to Hanna Decl.; Travis-Miller Decl. ¶ 9.
11. After the presentations and public comments that took place at the three noticed public meetings of the Mayor and Common Council held on July 10, July 16 and July 18, 2012 concerning the fiscal condition of the City, a majority of the members of the Common Council voted to declare a fiscal emergency and approved a resolution finding that: (1) the City is or will be unable to pay its obligations within the next 60 days, and that the financial state of the City jeopardizes the health, safety or well-being of the residents of the City absent the protections of Chapter 9; and (2) given the City’s dire financial condition, it was in the best interest of the City to declare a fiscal emergency. The Common Council also passed by a majority vote a resolution authorizing the filing of a petition under chapter 9 of the Bankruptcy Code.	Exhibits G and H to Hanna Decl.; Travis-Miller Decl. ¶ 10.
12. The City was specifically authorized under California law to be a chapter 9 debtor.	The evidence in paragraphs 3-11 above and that no party maintained an objection to eligibility on Section 109(c)(2) grounds.
13. A plan entitled “Fiscal Emergency Operating Plan--July 2012 to September 2012” (the “Fiscal Emergency Plan”) and a report entitled “City of San Bernardino selected Monthly Cash Flow Analysis	Exhibits L and M to Hanna Decl.; Simpson Decl., ¶ 21; Busch Decl., ¶ 16.

Uncontroverted Facts	Evidence
Measures to Manage Cash” were prepared and presented for approval to the Mayor and Common Council on July 24, 2012.	
14. The Fiscal Emergency Plan was approved by the Common Council on July 24, 2012.	Exhibit N to Hanna Dec.
15. The City was insolvent within the meaning of Section 101(32)(c) of the Bankruptcy Code as of August 1, 2012.	No party maintained an objection to eligibility on Section 109(c)(3) grounds. Amended Statement of Qualifications under Section 109(c) [Docket No. 124].
16. The City filed its Amended Statement of Qualifications signed by the City Manager that states under penalty of perjury that the City desires to effect a plan to adjust its debts.	Amended Statement of Qualifications Under Section 109(c) [Docket No. 124].
17. A document entitled Pre-Pendency Plan was prepared and first presented to the Common Council for consideration and approval at the meeting of the Mayor and Common Council conducted on August 30, 2012.	Busch III Decl. at ¶ 7 and Exhibit 2 thereto.
18. In September 2012 and on October 1, 2012, the Common Council approved the Pre-Pendency Plan as adjusted by a 9-Point Adjustment Plan.	Busch III Decl. at ¶ 7 and Exhibit 1, 2 and 3.
19. A document entitled Pendency Plan was prepared and first presented to the Common Council at the meeting of the Mayor and Common Council conducted on November 19, 2012.	Busch II Decl. at ¶ 5 and Exhibit 1 thereto.
20. The Common Council approved the Pendency Plan at the meeting of the Mayor and Common Council conducted on November 26, 2012.	Busch III Decl. at ¶ 5 and Exhibit 1 thereto.
21. On or about September 12, 2012, the City engaged Linda Daube to perform services for the City as the City’s principal representative and chief negotiator at all meet and confer sessions held with representatives of the City’s bargaining units. Linda Daube attended and participated in meetings with representatives of the City’s seven bargaining units subsequent to September	Declaration of Linda Daube In Support Of Debtor City of San Bernardino’s Motion Pursuant To 11 U.S.C. §§ 365, 901 And 904 For Order Approving: (A) Rejection Of Collective Bargaining Agreements With San Bernardino Public Employees Assoc., San Bernardino Police Officers Assoc. And San Bernardino City Professional Firefighters; And (B) February 1, 2013 Interim Modifications To Such Collective

Uncontroverted Facts	Evidence
12, 2012.	Bargaining Agreements [Docket No. 444] (“Daube Decl.”) at ¶ 3.
22. The City reached agreements with four of its seven unions (the General Bargaining Unit, the Fire Management Bargaining Unit, the Police Management Bargaining Unit, and the Management/Confidential Bargaining Unit) on modifications of the terms and conditions of employment to their respective collective bargaining agreements, and those modifications took effect on February 1, 2013 as set forth in Resolution No. 2013-22, Resolution No. 2013-23, Resolution No. 2013-24, and Resolution No. 2013-25.	Declaration Of Diana Leibrich In Support Of Debtor City Of San Bernardino’s Motion Pursuant To 11 U.S.C. §§ 365, 901 And 904 For Order Approving: (A) Rejection Of Collective Bargaining Agreements With San Bernardino Public Employees Assoc., San Bernardino Police Officers Assoc. And San Bernardino City Professional Firefighters; And (B) February 1, 2013 Interim Modifications To Such Collective Bargaining Agreements [Docket No. 446] (“Leibrich Decl.”) at ¶¶ 11-15 and Exhibits 17-20 thereto.
23. The City did not reach an agreement with three of its bargaining units on the modifications of the terms and conditions of employment- the Middle Management Unit, the Police Safety Unit and the Fire Safety Unit. On January 28, 2013, the City Council voted to impose modifications to the terms and conditions of employment on these three bargaining units as set forth in Resolution No. 2013-18, Resolution No. 2013-19, and Resolution No. 2013-20.	Leibrich Decl. at ¶¶ 16-19 and Exhibits 21-23 thereto; Daube Decl. at ¶ 13.
24. At the meeting of the Mayor and Common Council conducted on April 22, 2013, the City adopted its budget for the General Fund for fiscal years 2012-13 and 2013-14.	City Of San Bernardino’s Report Respecting: (1) Approval Of Budgets for Fiscal Years 2012-13 And 2013-14 Further Implementing Pendency Plan; And (2) Supplemental Update On City’s Financial Condition; Declaration Of Michael Busch In Support Thereof [Docket No. 572] (“Busch II Decl.”) at ¶ 5 and Exhibit 1 thereto.
25. The City was unable to negotiate with creditors because such negotiation was impracticable.	No party objected to eligibility on Section 109(c)(5) grounds. Amended Statement of Qualifications under Section 109(c)
26. In March 2007, the City was provided with a study from Management Partners, Inc., noting the City’s “fiscal distress,” “significant and threatening unfunded liabilities,” and “tenuous” general fund finances.”	Bissett Decl. ¶ 5, Ex. A (page 3). This uncontroverted fact was found by the court to be irrelevant to Section 109(c)(4) and Section 921 issues.

Uncontroverted Facts	Evidence
27. In March 2008, the City Manager reported a projected \$7.2 million budget deficit.	Bissett Decl. ¶ 7, Ex. C (page 1). This uncontroverted fact was found by the court to be irrelevant to Section 109(c)(4) and Section 921 issues.
28. In February 2009, the Interim City Manager reported a projected deficit of \$9.0 million for fiscal year 2008-2009, and a \$19.8 million deficit for fiscal year 2009-10.	Bissett Decl. ¶ 8, Ex. D (page 1). This uncontroverted fact was found by the court to be irrelevant to Section 109(c)(4) and Section 921 issues.
29. In early 2009, the City fire chief and police chief submitted reports with cost-cutting recommendations, including layoffs, but those recommendations were not adopted.	Bissett Decl. ¶¶ 9-10, Exs. E & F. This uncontroverted fact was found by the court to be irrelevant to Section 109(c)(4) and Section 921 issues.
30. During the meeting of the Mayor and Common Council on August 23, 2010, the Treasurer noted the possibility of bankruptcy if the City continued its “accounting tricks” and did not close its deficit.	Bissett Decl. ¶ 11. This uncontroverted fact was found by the court to be irrelevant to Section 109(c)(4) and Section 921 issues.
31. During the meeting of the Mayor and Common Council on August 23, 2010, the City’s Finance Director presented a PowerPoint Slide entitled “Symptoms of Bankruptcy.”	Bissett Decl. ¶ 11, Ex. G. This uncontroverted fact was found by the court to be irrelevant to Section 109(c)(4) and Section 921 issues.
32. The City’s Finance Department issued a report entitled “San Bernardino Budgetary Analysis and Recommendations for Budget Stabilization” on July 9, 2012 (the “Budget Report”). The Budget Report projected that the City’s General Fund balance would be a negative \$10.6 million by June 30, 2012.	Decl. Simpson [Dkt. No. 127] ¶ 6.
33. At the July 18, 2012 meeting of the Common Council, the Common Council adopted resolutions declaring a fiscal emergency and directing that a chapter 9 petition “shall be filed.” The Common Council resolutions authorizing the Petition say nothing about a plan of adjustment or let a “desire to effect” a plan of adjustment.	Bissett Decl. ¶¶ 14-15, Exs. J-K.

Uncontroverted Facts	Evidence
34. Nearly a year after the City filed its Petition, it has failed to file a plan of adjustment, set forth the terms of a plan of adjustment, or formulate so much as an outline of an eventual plan of adjustment. As of May 2013, no one at the City had been assigned the task of creating a plan of adjustment.	Busch Dep. at 268:18-272:4.
35. At the time the City filed its Petition, it had no concept or outline of a plan of adjustment.	<i>See</i> Busch Dep. at 268:18-272:4.
36. The City did not negotiate with its principal creditors prior to filing its Petition on Aug. 1, 2012 and has not engaged in meaningful postpetition negotiations with its creditors regarding the terms of a plan of adjustment.	<i>See</i> July 31, 2013 Declaration of Corey W. Glave filed concurrently herewith, ¶¶ 2-4; February 8, 2013 Declaration of Bonnie E. Clarke [Dkt. No. 401-3], ¶¶ 10, 13; March 21, 2013 Declaration of Dennis J. Hayes [Dkt. 498-1], ¶¶ 12-13, 28-30; February 26, 2013 Declaration of Michael A. McGill [Dkt. No. 424-2], ¶¶ 17-21, 24.
37. The City did not formulate a pendency plan until November 26, 2012.	<i>See</i> Declaration of Michael Busch Re City of San Bernardino's Pendency Plan [Dkt. No. 234], Ex. 1; CalPERS' Preliminary Objection [Dkt. No. 207] at 9.
38. The City has not submitted any evidence that it ever explored alternatives to bankruptcy, other than those included in the Budget Report of July 9, 2012.	Minutes of the July 10, 2012 council meeting (where bankruptcy was authorized) reflect that the City did not evaluate alternatives such as access to the capital markets or asset sales. <i>See</i> Bissett Decl. ¶ 13, Ex. I. The Budget Report of July 9, 2012 Minutes of City Council July 10, 2012 meeting. Hanna Decl. Exhibits B and C.
39. The City's Pendency plan is 10 pages long, contains no detailed supporting financial information, and is premised on a postpetition budget which deferred postpetition expenses.	<i>See</i> Pendency Plan [Dkt. No. 234-2].
40. The City had inadequate resources in its finance department at the time it filed its bankruptcy case and the City's finance department remains understaffed.	Bissett Decl., ¶ 5, Ex. A (page 2); <i>id.</i> ¶ 6, Ex. B (Busch Dep. At 257:17-261:5). Williams Decl. [Dkt. No. 282] ¶¶ 7-8.

Uncontroverted Facts	Evidence
41. The City did not produce to CalPERS its reconciled bank account statements until late January and early February 2013, and did not prepare cash forecasts until April 2013.	Crisafulli Decl. ¶¶ 16-17.
42. The City, since filing its Petition, has not provided all requested financial information to its creditors and parties in interest.	<i>See</i> March 21, 2013 Declaration of Dennis J. Hayes [Dkt. No. 498-1], ¶¶ 15-24; <i>see also</i> July 10, 2013 Declaration of Corey W. Glave [Dkt. 686, p. 11 of 298], ¶¶ 8. Decl. Crisafulli ¶¶ 15-18.
43. The City has failed to provide CalPERS with some financial data it has requested during the pendency of the City's case.	Decl. Crisafulli ¶¶ 13-18.
44. During the 90 days before filing its bankruptcy petition, the City paid some \$2 million as "cashouts" to employees and newly retiring employees, including nearly \$1.2 million in July (\$600,000 of which was paid on the day before it filed its Petition).	Bissett Decl. ¶ 16, Ex. L (Reuters article); Crisafulli Decl. ¶ 23.
45. The City has made payments on prepetition debt post-filing while it continues to not pay some postpetition creditors.	Busch Dep. at 265:9-268:17
46. The City has failed to timely pay millions of dollars in postpetition obligations.	Crisafulli Decl. ¶¶ 20-21; Busch Decl. of April 29 [Dkt. No. 572-6].
47. The City knew of the underlying settlements in the three civil rights cases months before filing its Petition.	<i>See generally</i> Galipo Decl.
48. The audited annual financial report for the City's Water Department reflects that at the time the City filed its Petition, the City's Water Department held over \$37,000,000 in immediately available cash and cash equivalents which were not designated as restricted. The City has set forth no evidence indicating that it considered borrowing money from the Water Department to address its liquidity concerns.	Decl. Crisafulli ¶ 12. The Court determined as a matter of law that the City could not use any of the Water Department funds as general fund monies nor could it borrow from the Water Department.

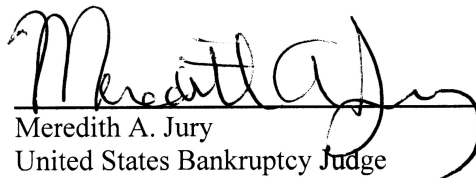
Uncontroverted Facts	Evidence
49. The City's Water Department had total net assets in the amount of \$263 million as of the Petition date.	Decl. Crisafulli ¶ 12. The Court determined as a matter of law that the City could not use any of the Water Department funds as general fund monies nor could it borrow from the Water Department.

CONCLUSIONS OF LAW

1. The Court's conclusions of law on the City's Motion for Summary Judgment on Eligibility for Chapter 9 Relief (the "Motion") were made by the Court on the record at the hearing on August 28, 2013, and will be reflected in the Court's forthcoming written opinion on its ruling on the City's Motion.

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Date: September 17, 2013


Meredith A. Jury
United States Bankruptcy Judge

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*): CALPERS' STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner stated below:

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF) ^B Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of (*date*) 09/11/13, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

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☐ Service information continued on
attached page

2. SERVED BY THE COURT VIA UNITED STATES MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses indicated below:

Debtor

1 City of San Bernardino, California, City Hall, 300 North "D" Street,
2 San Bernardino, CA 92418-0001

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4 ☐ Service information continued on
5 attached page

6 **3. TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this judgment or
7 order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy
8 bearing an "Entered" stamp by United States mail, overnight mail, facsimile transmission or email and file a
9 proof of service of the entered order on the following persons and/or entities at the addresses, facsimile
10 transmission numbers, and/or email addresses stated below:
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29 ☐ Service information continued on
30 attached page